

JURISIDCTION & AUTHORITIES OF AN IMMIGRATION JUDGE



OFFICE OF THE CHIEF IMMIGRATION JUDGE
ACIJ JACK H. WEIL
OCTOBER 16, 2018

Jurisdiction Vests & Proceedings Commence

U. S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No. [REDACTED]
(b) (6)

In the Matter of:

Respondent: (b) (6) currently residing at:
SERVICE PROCESSING CENTER, ICE 1115 NORTH IMPERIAL AVENUE
EL CENTRO CALIFORNIA 92243 (760) 336-4600
(Number, street, city state and ZIP code) (Area code and phone number)

- ☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

Department of Justice
Executive Office For
Immigration Review

SEP 23 2005

The Service alleges that you:

U.S. Immigration Court
El Centro, California
Received By: _____

- 1) You are not a citizen or national of the United States;
- 2) You are a native of MEXICO and a citizen of MEXICO;
- 3) You arrived in the United States at or near Calexico, California, on or about September 16, 2005;
- 4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

112(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

"TO BE CALENDARED AND NOTICE PROVIDED BY THE OFFICE OF THE IMMIGRATION JUDGE." 1115 N. Imperial Ave., El Centro, CA 92243

(Complete Address of Immigration Court, Including Room Number, if any)

on a date to be set at a time to be set to show why (b) (7)(C) based on the charge(s) set forth above.

EXHIBIT#
DATE
I.D. ONLY ADMITTED

Date: September 16, 2005

Calexico, California
(City and State)

See reverse for important information

Form I-862 (Rev. 3/22/99)N

Notice to Appear



In removal proceedings under section 240 of the Immigration and Nationality Act

(b) (6)

In the Matter of:

Respondent: (b) (6)

IN I&NS CUSTODY

(Number, street, city state and ZIP code)

currently residing at:

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

JAN 27 2003

FILED WITH
IMMIGRATION COURT
SAN DIEGO, CA

- ☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

- 1) You are not a citizen or national of the United States;
- 2) You are a native of CHINA, PEOPLES REPUBLIC OF and a citizen of CHINA, PEOPLES REPUBLIC OF;
- 3) You arrived in the United States at or near Tecate, California, on or about January 22, 2003;
- 4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____
a place to be set

on a date to be set _____
(Date)

at a time to be set _____
(Time)

(b) (7)(C)

charge(s) set forth above.

Date: January 22, 2003

San Diego, California

(City and State)

See reverse for important information

Immigration Judge Defined: INA 101(b)(4) & 8 CFR 1003.10

An attorney whom the [REDACTED] Attorney General appoints as an administrative judge within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the INA and other assigned proceedings.

Must meet requirements of other Departmental at [REDACTED]



Immigration Judge Defined: INA 101(b)(4) & 8 CFR 1003.10

Immigration Judges shall act as
the Attorney General's delegates in
the cases that come before them.



Source of Powers & Authority

The powers and authority of the office are limited to those which:

1. have been designated to the Attorney General by statute (as interpreted by case law) and
2. then have been assigned to the Immigration Judges by statute or regulation



Judicial Independence as it Pertains to the Immigration Judge


In deciding the individual cases before them, and subject to applicable governing standards, Immigration Judges shall exercise their independent judgment and discretion...

What if the Attorney General does not agree with [redacted]?



Powers & Authorities: INA 240(c)(1)(A) & 8 CFR 1240.1(a)(1)(i)-(ii)


In any removal proceeding, the Immigration Judge shall have the authority to:

- Determine removability *based only on evidence produced at the hearing (or administratively noticable facts)*
- Make decisions, including orders of removal, as per INA 240(c)(1)(a)
- Determine listed  ons for relief



Sources of Authority: INA 240(b)(1) & 8 CFR 1240.1(c)

The Immigration Judge  shall:


- Administer oaths
- Receive (material & relevant) evidence
- Interrogate (?), examine, and cross examine the alien and any witnesses. 



Duty to Develop the Record & Associated Powers

██████████
██████████
The Immigration Judge is expected to develop the record (including, but not limited to, identifying available forms of relief).

How do I do this and remain an impartial adjudicator?

████████████████████



Duty to Develop the Record & Associated Powers

The Immigration Judge  has the authority to:

- Question witnesses directly
- Request that certain witnesses be presented
- Request submission of certain kinds of documents or corroborating evidence.

What do I do if a party does not comply?




Subpoena power

██████████
██████████

The Immigration Judge may issue subpoenas for the attendance of witnesses and presentation of evidence.

How do we handle failure to comply? See, 8 CFR 1003.35(b)(6)
██████████



Associated Powers of an Immigration Judge

- Rule on objections and issues of admissibility regarding documentary evidence and testimony
- Accept witnesses as experts
- Accept proffers of evidence



Establish Timelines: 8 CFR 1003.31(c) & 1003.29

An Immigration Judge may:

- Set reasonable deadlines for submission of evidence
- Extend deadlines
- Continue proceedings for “**good cause**”



Establish Timelines: 8 CFR 1240(c)

The Immigration Judge shall...
otherwise regulate the course of
the hearing.

In what order shall I receive and
consider evidence?

Should I adjudicate an application
for relief if I am not going to
sustain the charge?



Powers & Authorities:

8 CFR 1240.1(a)(1)(iii)

In any removal proceeding, the Immigration Judge shall have the authority to:

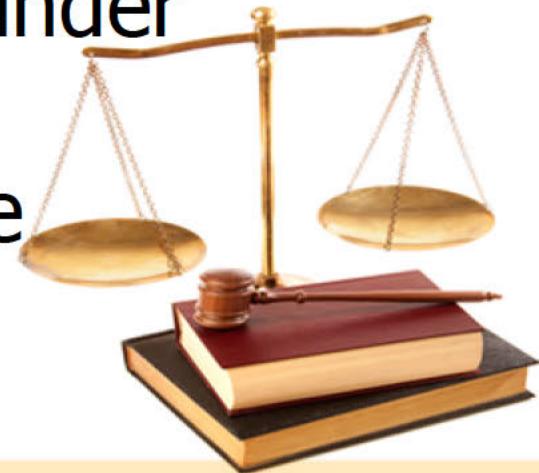
- Order withholding of removal pursuant to INA 241(b)(3) & the Convention Against Torture

In such cases a removal order is entered and the [REDACTED] or deferred.



General Powers & Authorities: 8 CFR 1003.10 & 8 CFR 1240.1(a)(1)(iv)

██████████
In deciding the individual cases before them, and subject to applicable governing standards, Immigration Judges ... may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.
██████████



Civil Contempt Statutorily Authorized but no Implementing Regulations

The Immigration Judge shall have authority (under regulations prescribed by the AG) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority.

How do we maintain control in absence of court orders?



Power to Certify Removal Decision: 8 CFR 1240(a)(1)(iv)(2)

The Immigration Judge may certify decision to BIA when it involves an unusually complex or novel issue of law or fact.



Power to Allow Withdraw of Application for Admission: 8 CFR 1240(d)

An Immigration Judge may allow only an arriving alien to withdraw an application for admission.

Qualifiers:

- After inadmissibility resolve, ordinarily with DHS consent
- Intent & means to depart & in interest of justice





Authority to Reconsider Proceedings: INA 240(c)(7)

██████████
██████████
An Immigration Judge may reconsider any decision (subject to time and/or numerical rules) or sua sponte at any time.
if there was an error of law or fact in the prior proceeding.





Adjudications Beyond Authority of an Immigration Judge

- I-130 (Petition for Alien Relative)
- I-140 (Petition for Alien Worker)
- N-600 (Application for Certificate of Citizenship)
- N-400 (Application for Naturalization)
- I-360 SIJ Status Application
- Initial I-589 of [REDACTED]



Handling Adjudications During Proceedings Beyond IJ Authority

Although the Immigration Judge does not have authority to adjudicate certain applications, the judge may need to examine whether the application is prima facie approvable to determine whether “good cause” exists to grant a continuance for adjudication.



U.S. Citizenship: A Legal & Jurisdictional Issue

Jurisdiction in the executive to order deportation only exists if the person arrested is an alien. The claim of citizenship is thus a denial of an essential jurisdictional fact.

This holding extends to authority to detain a respondent as well.

Ng Fung Ho v. White,
259 U.S. 276, 281 (1922)

